

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CONRAD V. MURPHY,)	
Plaintiff,)	
)	
v.)	C.A. No. 04-12724-JLT
)	
UNITED STATES, et al.,)	
Defendants.)	

MEMORANDUM AND ORDER

For the reasons stated below, plaintiff's motion to proceed in forma pauperis is denied without prejudice to filing an Application to Proceed Without Prepayment of Fees and Affidavit with a copy of his certified prison account statement within forty-two (42) days of the date of this Memorandum and Order.

BACKGROUND

On December 10, 2004 plaintiff Conrad V. Murphy, now incarcerated at MCI Cedar Junction, submitted for filing his self-prepared, civil rights complaint accompanied by his self-prepared Motion to Proceed In Forma Pauperis.

DISCUSSION

To proceed with an action in forma pauperis, a prisoner must complete an Application to Proceed Without Prepayment of Fees and Affidavit and return it to the court with a certified copy of the prisoner's trust account statement showing the transactions for the previous six months. See 28 U.S.C. §

1915 (a)(1), (a)(2). The court then assesses, and when funds exist, collects from the plaintiff at the time the action is filed an initial partial filing fee of 20% of the average monthly deposits or the average monthly balance in the prisoner's trust account for the six-month period immediately preceding the filing of the complaint. See 28 U.S.C. § 1915 (b)(1).

Plaintiff submitted a motion to proceed in forma pauperis and a prison account statement for the period beginning February 1, 2004, through August 11, 2004. However, the prison account statement does not cover the period immediately preceding the filing of the complaint as required by Section 1915(a)(2).

To enable this Court to calculate the amount, if any, that plaintiff must initially pay pursuant to Section 1915(b)(1), plaintiff must file a copy of his prison account statement for the six-month period preceding the filing of the complaint. Plaintiff will be granted additional time to do so.

ORDER

Based upon the foregoing, it is hereby

ORDERED, plaintiff's motion for leave to proceed in forma pauperis (Docket No. 1) is denied without prejudice to prejudice

to filing an Application to Proceed Without Prepayment of Fees and Affidavit with a copy of his certified prison account statement within forty-two (42) days of the date of this Memorandum and Order; and it is further

ORDERED, if plaintiff wishes to proceed with this action, he shall file, within forty-two (42) days of the date of this Memorandum and Order, an Application to Proceed Without Prepayment of Fees accompanied by a certified copy of his institutional account statement for the six-month period preceding the filing of the complaint. The Clerk shall send plaintiff an Application to Proceed Without Prepayment of Fees and Affidavit with this Order.

SO ORDERED.

Dated at Boston, Massachusetts, this 11th day of January, 2005.

/s/ Joseph L. Tauro
JOSEPH L. TAURO
UNITED STATES DISTRICT JUDGE